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September 2, 2016

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VIA E-MAIL AND ECF

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, New York 10004

Re: In re: Bernard L. Madoff Investment Securities LLC, Adv. Pro. No. 08-01789 (SMB)

Dear Judge Bernstein:

We are counsel to Irving H. Picard, Esq., the Trustee for the substantively consolidated SIPA liquidation proceedings of Bernard L. Madoff Investment Securities LLC and the estate of Bernard L. Madoff. We write to request that your honor appoint a discovery arbitrator.

As the Court is aware, a number of discovery disputes have been brought before the Court in the past year, and we currently have several “bad faith” cases with unique discovery disputes that we anticipate bringing before the Court in coming months. With many of the Trustee’s cases becoming more active, we anticipate that there will be others. Your Honor previously authorized a discovery arbitrator for resolution of confidentiality designations in connection with the extraterritoriality briefing, and that procedure allowed the parties to avoid the Court’s time and attention in several matters. The Court has also suggested that a discovery arbitrator would provide a practical procedure for resolution of future discovery disputes. We believe the appointment of a discovery arbitrator and the procedures outlined in the Proposed Order attached as Exhibit A will result in the consistent, fair, and efficient resolution of the disputes and reduce the time and expense for the parties and the Court. We anticipate that after the Court appoints the arbitrator, we will confer with counsel in the applicable matters and enter into a case-specific stipulation agreeing to submit the dispute to the arbitrator and to the procedures in the Proposed Order. Accordingly, pursuant to Rule 9019(c) of the Federal Rules of Bankruptcy Procedure and General Order M-390, we respectfully request that the Court enter the Proposed Order. We believe that a former federal judge with substantial discovery experience would be well suited for the role, and we attach a list of candidates as Exhibit B. We

Atlanta Chicago Cincinnati Cleveland Columbus Costa Mesa Denver
Houston Los Angeles New York Orlando Philadelphia Seattle Washington, DC

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have not conferred with the prospects about their interest and availability. While none of the prospects are on the Court's mediator list, each meets the qualifications set forth in General Order M-390 and therefore could apply and be appointed.

We thank Your Honor for consideration of this request and await the Court's direction.

Respectfully,

/s/ David J. Sheehan

David J. Sheehan

Enclosures

cc: Karin S. Jenson (via email)
Edward J. Jacobs (via email)